

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Amendment of Parts 1, 21, 73, 74 and 101 of the)	WT Docket No. 03-66
Commission's Rules to Facilitate the Provision of Fixed)	RM-10586
and Mobile Broadband Access, Educational and Other)	
Advanced Services in the 2150-2162 and 2500-2690)	
MHz Bands)	
)	
Part 1 of the Commission's Rules - Further Competitive)	WT Docket No. 03-67
Bidding Procedures)	
)	
Amendment of Parts 21 and 74 to Enable Multipoint)	MM Docket No. 97-217
Distribution Service and the Instructional Television)	
Fixed Service to Engage in Fixed Two-Way)	
Transmissions.)	

Reply Comments of
The George Mason University Instructional Foundation, Inc.
F Corporation and
The Michael Kelley Revocable Trust, d/b/a/ Shannondale Wireless

The George Mason University Instructional Foundation, Inc., by its President, F Corporation, by its CEO, and the Michael Kelley Revocable Trust, d/b/a/ Shannondale Wireless, by its Sole Trustee, hereby submit their consolidated reply comments in response to the Commission's *Notice of Proposed Rulemaking ("NPRM")* in above the captioned matters.

I. Support for the Initial Coalition Proposal and Its Response to the NPRM.

Having read the wide variety of initial response comments to the NPRM, we are all the more convinced that the original WCA-NIA-CTN Coalition's Proposal offers the best solution to maximizing the public benefit from this spectrum. Other approaches to the band plan and to the transition process either offer self-serving opportunities for those presenting these alternatives, or simply don't provide the kind of flexibility that the Coalition plan makes possible. Thus we wholeheartedly and unreservedly maintain our support for the Initial Proposal.

II. High Power Allocation Must be Preserved

Although we were neither convinced nor swayed by the myriad of the other approaches presented in the initial comment round, we were particularly troubled by comments opposing a high power mid band segment made by Grand Alliance (p. 2), Spectrum Market (p. 11-12), Fixed Wireless Holdings (p. 6), IMWED (p. 11-18), and hinted at in some other comments. Not only does this high power mid band segment efficiently provide for FDD operations in this band, it preserves for the foreseeable future the opportunity for educators and commercial operators to effectively reach a wide audience cheaply and efficiently with video or data transmissions.

Contrary to assertions by some of these commentators, point-to-multipoint distribution of video services is not passé nor is it likely to be for a long time. Here in Washington, our ITFS system is on the air with all of its channels 7 days a week with programming to government agencies, law firms, trade associations, news organizations, schools, and other business and government users with programs that include C-SPAN,

CNN, CNBC, C-SPAN2, and the open meetings of the FCC and FERC. We also provide George Mason University courses for credit on this system five days a week, and on a co-channel point-to-point basis, we send GMU and Northern Virginia Community College courses for credit out to cable headends throughout Northern Virginia that reach an additional 250,000 cable homes. This system has been in operation for over twenty years, and is not likely to go away any time soon.

There are robust high power ITFS systems operated by The University of Maryland, Stanford University, The Illinois Institute of Technology in Chicago, by the Catholic Archdioceses of Brooklyn, Boston and Los Angeles, and by school systems in many states too numerous to mention here. Many of these have been operating for more than twenty years, and they are not going to go away any time soon.

High Power commercial systems utilizing leased ITFS and licensed MMDS stations provide wireless cable and high speed internet services in Ohio, Wisconsin, and many rural areas in the west. These are not going to go away any time soon.

It is a wrong to say that the Internet will completely replace ITFS as a vehicle for delivering distance education. The Internet is new and promising, but just as television didn't replace radio or the movies, this new technology is not going to replace what went before it either. The Internet can't match the quality and clarity of Instructional television and won't, until huge and inexpensive broadband pipes into the home become widely deployed throughout the country. That is not going to happen any time soon.

The Initial Coalition Proposal provides for a transition of the high power mid band segment on a market by market basis as long as potentially affected parties concur,

and if the Coalition Proposal is adopted by the Commission (as it should be), there will be no need for future rulemakings by the Commission to transition the mid band to low power cellular operations in selected markets in the future. That may never happen in some markets; it may not happen anytime soon in many other markets, but the Coalition Proposal provides a mechanism for it to happen sometime in the future if and when licensees are willing. For the Commission to use this NPRM procedure at this time to abolish the continued high power video and data use of a portion of this band would not serve the public interest and would eviscerate widespread and long term instructional and commercial applications.

III. ITFS Must Remain an Educational Resource

Not surprisingly, commercial interests commenting in the Initial Response to the NPRM support the concept of open eligibility for ITFS licenses. Earthlink (pp. 10-13), Sprint (pp. 23-24), National Telecommunications Cooperative Association (p. 4), Motorola (p. 5, 14), Bell South (pp. 22-26), and others argue for various reasons that ITFS licensees should be able to sell their licenses outside of the educational community to any interested party.

Overwhelmingly, the education community, through the joint NIA-CTN filing and in individual filings in the Initial Comment round have opposed any open eligibility for ITFS licensees. More opposition by the education community to open eligibility is coming in this Reply Comment stage from licensees and in the NIA-CTN joint filing. Unfortunately, in an October 16, 2003 letter to Secretary Dortch, The Network for Instructional Television, which is not an accredited educational institution but is a

non-profit organization and currently eligible ITFS licensee, filed Reply Comments arguing for open eligibility for ITFS licensees as long as the commercial purchaser promises to make 5% of their digital capacity available to local educators. The Commission should not be swayed by this. NITV's position does not represent the education community. In fact, it is clearly an isolated opinion from a company that has increasingly turned to the Internet to distribute its "Teachers First" materials.

The fact is that the Commission set aside ITFS as an instructional resource in 1963, and this spectrum along with noncommercial educational radio and television allocations, have been the only air waves expressly reserved for non-profit, educational use. Over the years, educators found that they could more easily support their instructional mission by migrating their educational radio and television stations into noncommercial "Public Radio" and "Public Television" stations with little or no "for credit" instructional content, but with news, information, cultural and otherwise informative and thus educational programming. And since their inception, with the sole exception of a public television station in Pittsburgh, the FCC has carefully guarded and supported these allocations and not allowed them to be sold to and used as Commercial radio and television stations.

Sadly, the same cannot be said of the Commission's record with ITFS. In 1983, the FCC reassigned the ITFS E and F Groups for commercial use, and held a lottery for this valuable spectrum. Today, there are a total of 31 channels in the 2.5 GHz band, and more than 1/3, or eleven of those channels, have open eligibility and can be licensed to any qualified purchaser. (This includes the four "E" Group, four "F" Group, and 3 "H"

Group channels, which had never been part of the ITFS). Enough damage has already been done to this valuable educational resource. To allow the sale of the rest of it to commercial interests would amount to one of the most egregious and saddest examples of a federal government “taking” of local educational resources. The Commission was right to ask about open eligibility in the NPRM. It would be dead wrong to adopt it.

IV. Unlicensed Use of This Band is Not in the Public Interest

In thirty-nine pages of comments, New America Foundation and a coalition of others supporting it urge among other things “reallocation of roughly half of the entire ITFS band for unlicensed public access as a primary service” (p. 4). In the next page, however, they affirm that “. . . they do not propose elimination of ITFS services” (p. 5). The concept of a spectral commons, open and available for all Americans to use, is particularly attractive to the NAF. And, like the FCC’s Spectrum Policy Taskforce, NAF would like to experiment with unlicensed underlays. NAF goes much, much further than either the FCC’s Taskforce or the NPRM, however, by arguing in its Initial Comments not only for underlays, but for an unlicensed *overlay* -- the reassignment of 90 MHz of spectrum in this band from licensed to unlicensed use!

Although the Commission inquired in the NPRM about unlicensed use of ITFS “White Space” and unlicensed underlays beneath current licensed use of ITFS, this NPRM has never been about relieving existing licensees of 90 MHz of spectrum and reassigning it for Part 15 unlicensed use. And although if its proposal were adopted, NAF would have precipitated one of the most spectacular thefts of U.S educational resources in American history, the Administrative Procedure Act (Section 553) precludes

it and the public good would not be served by it. This spectrum is already in the service of the public good --the education community -- which uses it to serve the commonweal through its instructional programming, and otherwise to support its educational missions through commercial leasing of excess capacity. The spectrum is in good hands, already.

Apart from the NAF filing, the Commission got a cool reception in the Initial Comments to its inquiry about unlicensed use of current ITFS white space. The White Space is there in large part because of a Commission freeze on ITFS applications. Once the freeze is lifted and new rules adopted, there will be plenty of eligible educational applicants for licenses in that White Space. And although making existing licensed spectrum available to newcomers who use smart radios that automatically search the band for unused spectrum and listen before they transmit is an intriguing concept, no one has yet demonstrated that the concept will work in the real world. Someday equipment may become available. It is only a concept now.

V. Deinterleaving This Band Will Free The Spectrum For Flexible Use

Educators all across this country have used ITFS spectrum to great advantage for decades. At its inception in the early 1960's, primitive equipment raised interference concerns which caused the FCC to design the band with guard bands between every channel. This interleaved band was never initially intended to be fully utilized, and not until the successful experiments on the E and F Group in Salt Lake City in the early 1980's was it proven that interleaved channels could transmit without interference to one another from the same or even different towers. Over the years, equipment has become more sophisticated, interference concerns have lessened, and in many if not all markets

all of the thirty-one channels in the band are being utilized. But the channels remain interleaved forty years later, severely limiting the full and flexible use of this spectrum by individual licensees. Deinterleaving the entire ITFS/MDS band now makes perfect and elegant sense and no commentator except Dallas MDS Partners, an E Group licensee that proposes self-servedly (p. 45) that only the E and F Groups be deinterleaved has said otherwise.

IV. Conclusion

The Commission is to be commended for this NPRM and for responding to the WCA-NIA-CTN Coalition Proposal. GMUIF, F Corporation, and the Kelley Trust strongly support every aspect of that Proposal, as well as the NIA and its various members' stand against open eligibility for ITFS licensees. The Coalition Proposal provides the greatest possible flexibility in this band, allowing high power video to coexist with low power, cellularized FDD and TDD operations. The Proposal establishes a structure in the band for fixed, portable, and mobile uses and puts forth carefully crafted rules that will prevent interference from any one of these to the other.

We urge the quick adoption of the Coalition's Proposal and the rejection by the Commission of the other suggested band plans, eligibility changes, and unlicensed uses. This spectrum, already utilized heavily by educational and commercial entities for the public good will, under the Proposed band plan and new rules, become an even more valuable resource in the service of the American people.

THE GEORGE MASON UNIVERSITY INSTRUCTIONAL FOUNDATION, INC.

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